

BEPS Actions implementation by country

Action 7 – Permanent establishment status

On 5 October 2015, the G20/OECD published 13 final reports and an explanatory statement outlining consensus actions under the base erosion and profit shifting (BEPS) project. The output under each of the BEPS actions is intended to form a complete and cohesive approach covering domestic law recommendations and international principles under the OECD model tax treaty and transfer pricing guidelines.

It is now for governments to digest and introduce the necessary legislation. The table below sets out a summary of the expected implementation and timing of the proposals under Action 7 by territory.

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Country	Notes on implementation	Expected timing	Last reviewed by Deloitte
Argentina	Under the MLI, Argentina has opted for Option A in respect of Article 13 so that activities are only excluded from giving rise to a PE where they are of a preparatory or auxiliary character.	Subject to ratification and entry into force of the MLI	August 2017
Australia	Australia has taken unilateral action on PE issues through the enactment of the Multinational Anti-Avoidance Law (MAAL) (see below under "Unilateral BEPS actions"). Australia has included all of the BEPS revisions with respect to the PE status in its 2015 tax treaty with Germany. Australia has signed the MLI. Australia intends to adopt most of the BEPS revisions with respect to the PE status contained in the MLI, with the exception of the expanded dependent agent PE definition relating to commissionaire and similar arrangements.	1 January 2016 (MAAL) Ongoing in bilateral tax treaty negotiations Subject to ratification and entry into force of the MLI (see Action 15)	July 2017

Action 7 – Permanent establishment status

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Austria	Not yet known.	Not yet known	March 2017
Belgium	<p>The Minister of Finance has indicated that a circular letter on the broad interpretation of the concept of “dependent agent” would be appropriate.</p> <p>Belgium is expected to make a reservation on the new commissionaire definition in the MLI.</p>	Not yet known	May 2017
Brazil	Not yet known.	Not yet known	July 2017
Canada	Canada has reserved the right for the changes to the permanent establishment definition not to be included in its tax treaties.	See comments under Action 15, below	July 2017
China	<p>The PE discussion continues to be an area of focus in relation to agency PEs, e-commerce and the cross-border provision of services. The SAT considers that its current position regarding PE issues (contained in Circular 75) already reflect the Action 7 recommendations regarding the “agency PE” and the “preparatory or auxiliary” condition in relation to the article 5(4) exceptions and has therefore reserved the right not to apply the PE provisions in the MLI.</p> <p>Compliance with respect to PEs is expected to be enhanced, and the long-standing practice of attributing profits on a “deemed profit basis” is under review.</p>	Immediate (for existing practices)	July 2017
Czech Republic	Not yet known.	Not yet known	April 2017
Denmark	No changes are expected because existing domestic tax law already addresses the proposals.	N/A	April 2017

Action 7 – Permanent establishment status

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Estonia	Not yet known.	Not yet known	July 2017
Finland	Not yet known.	Not yet known	May 2017
France	This is likely to be implemented as part of the MLI.	Subject to implementation of the MLI	May 2017
Germany	Germany signed the MLI and opted for narrowing the exemptions for fixed place of business permanent establishments by requiring activities to be “preparatory or auxiliary” in character. Germany filed reservations not to apply the anti-fragmentation rule and the rule on splitting up of contracts in the MLI.	Subject to ratification of the MLI (application of the new and/or amended rules as from 1 January 2019 possible) and bilateral negotiations	July 2017
Greece	The tax authorities take a strong position in determining whether a PE exists in Greece. It is not yet known whether Greece’s domestic rules will be changed as a result of the Action 7 conclusions.	Not yet known	May 2017
Hong Kong	The IRD will amend the legislation and issue a DIPN to provide more guidelines.	Not yet known	July 2017
Hungary	Not yet known.	Not yet known	April 2017
Iceland	The definition of a PE has been revised so that it is largely based on the OECD definition. Under the rules, the time period for a construction site to give rise to a PE is six months, and ownership of internet servers and related equipment located in Iceland will not, in itself, constitute a PE.	1 January 2017	June 2017

Action 7 – Permanent establishment status

[More information on the Global Tax Reset & BEPS >>>](#)

India	Not yet known.	Not yet known	May 2017
Indonesia	Not yet known.	Not yet known	July 2017
Ireland	This may be implemented through the MLI.	Subject to implementation of the MLI	March 2017
Israel	<p>The tax authorities have published a circular that would provide guidance on internet-based activities conducted in Israel by nonresidents, in particular, with respect to what constitutes auxiliary services and when an agent would be considered as materially able to enter into a contract on behalf of its principal.</p> <p>The tax authorities have not made any other announcement with respect to Action 7.</p>	Not yet known	April 2017
Italy	Not yet known.	Not yet known	May 2017
Japan	Japan has committed to actively participate in the G20/OECD follow-up discussion expected to take place in 2016 with respect to the profit attribution to a PE.	Not yet known	May 2017
Luxembourg	Developments are under way in connection with the MLI to implement tax treaty-related measures to prevent BEPS, although it is not yet known what position will be taken by the Luxembourg tax authorities. The MLI is expected to be signed in June 2017.	Subject to implementation of the MLI.	March 2017

Action 7 – Permanent establishment status

[More information on the Global Tax Reset & BEPS >>>](#)

Mexico	Not yet known.	Not yet known	March 2017
Netherlands	The government supports the new definition of a PE as part of current Dutch tax treaty policy.	Subject to implementation of the MLI and bilateral negotiations	May 2017
New Zealand	<p>New Zealand signed the MLI at the signing ceremony on 7 June 2017. (Changes to domestic law are not required to give effect to the MLI as tax treaties are given effect in New Zealand by way of Order in Council.)</p> <p>New Zealand has not reserved on the MLI articles relating to the amended definition of permanent establishment and therefore will adopt those articles.</p> <p>Consultation is underway on unilateral options to counter the avoidance of PE status; the measures would apply where a related entity (e.g. a wholly owned subsidiary) carries out sales activities for a nonresident in New Zealand under an arrangement that is contrary to the purpose of the PE provisions.</p>	<p>Subject to implementation of the MI and individual treaty negotiations</p> <p>Legislation is not expected until 2018</p>	June 2017
Norway	Norway is expected to implement the changes proposed in the MLI that concerns commissionaire arrangements and similar arrangement, specific activity exemptions (option A) and the splitting-up of Contracts (save for exploration and exploitation of natural resources which will not be not affected by the change).	Subject to implementation of the MLI	August 2017
Poland	Not yet known.	Subject to implementation of the Multilateral Instrument (MLI) and bilateral negotiations	May 2017
Portugal	Not yet known.	Not yet known	July 2017

Action 7 – Permanent establishment status

[More information on the Global Tax Reset & BEPS >>>](#)

	The PE concept is already defined in Russian law.		
Russia	Russia has opted for option A under Article 13(1) of the MLI and has reserved the right for Article 14 not to apply in relation to the exploration and exploitation of natural resources.	N/A	July 2017
	It is not yet known whether any changes to tax law will be made as a result of the Action 7 recommendations.		
Saudi Arabia	However, it should be noted that the General Authority for Zakat and Tax (GAZT) (previously the Department of Zakat and Income (DZIT)) recently issued internal guidance recommending a stronger position on service PEs. The guidance states that if a non-resident provides services in Saudi Arabia for a period exceeding the agreed services PE duration under an applicable tax treaty (i.e. 183 days in a 12-month period), the non-resident will be deemed to have a PE in Saudi Arabia, regardless of whether the services were physically rendered in Saudi Arabia. Therefore, a foreign service provider rendering services in Saudi Arabia for more than 183 days may create a PE even if it does not have any personnel or employees actually in Saudi Arabia.	Not yet known	December 2016
Singapore	Singapore signed the MLI on 7 June 2017. Singapore has reserved against the changes to the PE article.	Not yet known	August 2017
Slovakia	Slovakia has signed the MLI and chosen to apply Option A under article 13(1) in respect of the specific activity exemptions.	Subject to ratification of the MLI	August 2017
Slovenia	Not yet known.	Not yet known	December 2016

Action 7 – Permanent establishment status

[More information on the Global Tax Reset & BEPS >>>](#)

South Africa	It will be to South Africa's benefit to incorporate the changes to the definition of a PE into all of its tax treaties.	Not yet known	December 2016
South Korea	There is no indication that the OECD's recommendation will be adopted.	Not yet known	April 2017
Spain	No changes have been made to existing law, although changes are expected. Some Spanish courts have been interpreting the PE concept in line with BEPS standards.	Subject to implementation of the MLI	May 2017
Sweden	Sweden has chosen not to apply the articles in the MLI related to Action 7, i.e. articles 13-15, and has not chosen to incorporate any of these changes to any recently concluded tax treaties. There is no indication that the Swedish PE definition will be updated in accordance with Action 7.	N/A	July 2017
Switzerland	Not yet known, but any changes are expected to be subject to the multilateral instrument.	Subject to implementation of the multilateral instrument	February 2017
Turkey	The definitions of a "work place" and a PE have been revised in the draft Tax Procedures Code to cover digital / electronic commercial activities. Corporate tax-exempt status of liaison offices that are permitted by the Ministry of Economy to operate as "regional management centres" has been clarified through Law No. 6728 by the inclusion of such liaison offices operating as regional management centers within the list of entities which are exempt from corporation tax (Article 4/(1)/ö of the Corporation Tax Law). The income tax exemption for salaries of employees of liaison offices that are permitted to operate as "regional management centers" has been incorporated into the Turkish Individual Income Tax Law through the amendment made by Law No. 6728 in Article	The Draft Code still is pending and it is not yet known when it will be enacted 9 August 2016 1 September 2016	June 2017

Action 7 – Permanent establishment status

[More information on the Global Tax Reset & BEPS >>>](#)

23 of the Individual Income Tax Law.

United Kingdom	The UK intends to retain the current “preparatory and auxiliary” provisions in its treaties, and it does not intend to adopt most of the revisions suggested by the MLI, although it will accept the anti-fragmentation rule. The UK considers that modern approaches to transfer pricing recover the appropriate slice of profit.	Subject to the outcome of the public consultation, implementation of the MLI and bilateral negotiations	May 2017
United States	The Treasury Department appears to be somewhat favorably disposed to some, but not all, of the recommendations in Action 7, but is awaiting the completion of the report on the attribution of profits. Signed tax treaties have been delayed in the Senate since 2011 and may remain so indefinitely, so the timing of any changes is unknown.	N/A	March 2017



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